

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-607-1986(O&M)

Date of decision: 29.01.2024

State of Punjab and another

....Appellants

Versus

Dr. Sudarshan Kumar Puri through LRs

..Respondent

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr.Aman Dhir, DAG, Punjab

Mr.R.Kartikaye, Advocate
Ms. R.Akansha, Advocate and
Mr. Hitesh Kumar, Advocate
for the respondent

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the appellants/defendants-State of Punjab assail the correctness of the judgment and decree passed by the First Appellate Court, which, in turn, has reversed the judgment and decree passed by the trial court.
2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.
3. Certain public-spirited persons, in order to encourage education in engineering, constituted a Council for National Institute of Engineering, Hoshiarpur. Late Shri Rai Sahab Nand Lal Puri had purchased the suit property by virtue of a sale deed dated 5th March,

1944. He was one of the members of the Council. In the beginning, the Institute was set up in a small building near Arya Samaj Mandir. In order to expand, vide agreement to sell dated 10th June, 1955, late Sh. Puri agreed to transfer the property in favour of the Council on no profit basis, subject to the stipulation that the land shall be utilised only for constructing building for the National Institute of Engineering. Ultimately, a conditional sale deed was also executed with regard to 45 kanals 4 marlas land on 9th November, 1955 for Rs.22,800/-. The Council erected a small shed and purchased cement for construction. However, it was unable to construct the building for the Institute. Ultimately, the property was gifted to the State government, which constructed the Officers' Colony. Successor interest of late Sh.Puri (the plaintiff) filed the suit for possession. The defendants, while contesting the suit, claimed that by virtue of the gift deed executed by the Council, the State government is the absolute owner of the property.

4. The trial court decided all other issues in favour of the plaintiff. However, dismissed his suit on the ground that the plaintiff did not file the suit within the prescribed time of limitation. However, the First Appellate Court allowed the plaintiff's Appeal, against which, this Regular Second Appeal has been filed.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book alongwith the requisitioned lower court record.

6. Learned State counsel has contended that the plaintiff was required to file the suit for declaration in order to seek annulment of the gift deed. It is further contended that the condition in the sale deed in favour of the Council is in violation of Section 11 of the Transfer of Property Act, 1882. In the end, it is contended that the suit filed by the plaintiff was correctly dismissed by the trial court having been filed beyond the period of limitation.

7. On the other hand, learned counsel representing the respondent (plaintiff) supported the judgment of the First Appellate Court.

8. At the time of arguments, the learned counsel representing the parties do not dispute that the sale deed executed by the predecessor of the plaintiff on 9th November, 1955 contained a specific stipulation to the effect that if the land is used for any other purpose except constructing building for the National Institute of Engineering, the same shall revert back to the owner, on return of the sale consideration, without any interest. It is also not in dispute that the Council failed to construct the building. Thus, the ownership of the Council was dependent upon fulfilment of condition subsequent, which was never fulfilled. Hence, the Council's title in the property became defective, particularly in view of the specific stipulation contained in the sale deed. Consequently, further gift of the property by the Council in favour of the State government is also governed by the same to stipulation because the subsequent gift becomes

subservient to the sale deed. Moreover, it is well settled that one cannot pass the title in a better proportion than what he himself has.

9. Section 11 of the Transfer of Property Act, 1882 provides that the restriction, which is repugnant to the interest created is not valid. It is evident that Section 11 provides for creation of absolute interest in the property. In this case, the sale deed executed in the year 1955 does not create absolute interest in favour of the Council.

10. The limitation for filing a suit for possession on behalf of owner is governed by Article 65 of the Schedule attached to the Limitation Act, 1963. Column no. 3 of the Schedule provides that time for filing a suit will begin to run, when the possession of the defendant becomes adverse to the plaintiff. It is not the case of the State that its possession has become adverse to the plaintiff. The last argument of the learned State counsel has no substance because the plaintiff has sought relief of possession in accordance with the terms of the sale deed. Hence, he was not required to challenge or seek annulment of the gift deed. The conditional sale in favour of the Council automatically ceases to be effective on failure of fulfilling the stipulation. Hence, the plaintiff was not required to file suit for annulment of either the sale deed or the gift deed.

11. Keeping in view the aforesaid facts, there is no substance in the appeal. Hence, the same is dismissed accordingly. Needless to observe that the State may decide to acquire the land in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013. If the State takes a conscious decision, within a period of six months, from today, this decision shall not impact the aforesaid acquisition.

12. All the pending miscellaneous applications, if any, are also disposed of.

29.01.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE